



POLICE DEPARTMENT

August 3, 2018

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In the Matter of the Charges and Specifications :

Case No.

- against - :

2015-14637

Police Officer Richard Ernyey :

Tax Registry No. 953841 :

113th Precinct :

-----X
At:

Police Headquarters
One Police Plaza
New York, New York 10038

Before:

Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent:

Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
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To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Richard Ernyey, while on duty and assigned to the 113th Precinct, on or about August 30, 2014, while outside of 156-04 137th Avenue in Queens, wrongfully failed to ensure that a person in his custody was put inside a Department vehicle without making contact with said vehicle. (*As Amended*)

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT - PROHIBITED
CONDUCT GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 2 and June 18, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Department called Richard Bacquie and Edwin Pena as witnesses. Respondent called Sergeant William Tergesen and Police Officer Michael McCaffrey as witnesses and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty.

ANALYSIS

The following is a summary of the facts which are not in issue in this case. On August 30, 2014, at approximately 2148 hours, police officers responded to [REDACTED] located within the 113th Precinct, to investigate a noise complaint. Sergeant William Tergesen, along with Respondent, Police Officer Michael McCaffrey, Police Officer Lovelock and two other uniformed police officers under his supervision, arrived at the location in a marked police van. The driver parked the van on [REDACTED] in front of the location.

Sergeant Tergesen directed Respondent to accompany him to the driveway at that address. Once they arrived at the rear gate to the backyard, Sergeant Tergesen used his flashlight to attract the attention of the people in the backyard. At that point, Richard Bacquie, the homeowner, came toward Sergeant Tergesen and met him at the gate leading to the driveway.

Bacque had invited friends to his home that evening for a barbeque. Person A and Person B were present at the gathering and provided statements to CCRB. Bacque and Sergeant Tergesen had a verbal exchange which was interrupted when Bacque placed a call to 911 from a mobile phone he had on his person. After Bacque had been in discussion with the 911 operator for some time, Sergeant Tergesen issued a directive to the police officers present to take Bacque into custody.

The police officers, including Respondent, used force to bring Bacque to the ground and eventually handcuff him. Bacque was then lifted to his feet and escorted to the police van by Respondent and Officer McCaffrey. The manner in which Bacque entered the police van is disputed by the parties. Bacque was transported to the 113th Precinct for arrest processing and eventually arraigned on criminal charges. Bacque subsequently brought a civil action against Respondent and this Department, settling the suit on April 30, 2018, for \$100,000. Bacque has sued this Department on previous occasions after arrests, including one civil suit which was pending as of the date of this hearing.

At issue in this case is whether Respondent failed to safeguard Bacque's person once he was in custody, which failure resulted in Bacque's head striking the police van. Based upon the credible, relevant evidence in the record, I find that the Department has failed to meet its burden of proof by a preponderance of the evidence that Respondent committed the charged misconduct.

The following is a summary of the relevant witness testimony.

Richard Bacque testified that he is a foreman specializing in tunnel construction (T. 26, 99-100). On August 30, 2016, he owned a home located in Southeast Queens near [REDACTED] (T. 24-25). Bacque conceded that music was playing from a laptop which was connected to speakers but asserted that the volume was moderate (T. 27, 28-29, 34, 89). He

described the volume as low enough for two people in the yard to have a conversation without having to raise their voices (T. 102). Bacquie testified that one of his guests alerted him to the presence of a police van in front of his home (T. 25, 26). Bacquie claimed that he turned down the volume of his music, then approached the police officers (T. 28-29, 62, 89, 90). Bacquie's backyard had gates which led to the front of his home, as well as gates which led to his driveway, which was at the rear of his home (T. 101).

Bacquie testified that as he approached the police officers, he recognized one, Officer Lovelock, whom he believed he had encountered in the past (T. 32). Bacquie observed that all of the police officers were in uniform and were wearing gloves (T. 32-33). As Bacquie observed Sergeant Tergesen approaching the backyard, he warned him that he should not enter onto his property unless he had a search warrant (T. 33, 63, 91). According to Bacquie, Sergeant Tergesen told him that he was there to investigate a noise complaint and requested Bacquie's identification (T. 34). Bacquie refused to provide identification and asked why he had to do so (*Id.*). Sergeant Tergesen again requested Bacquie's identification, which he again refused to provide (*Id.*). Bacquie claimed that Sergeant Tergesen was smoking a cigar and that he blew cigar smoke in his face (T. 35, 65). Bacquie placed a call to the 911 emergency system from his mobile telephone and requested that a lieutenant respond to his home because Sergeant Tergesen was being aggressive (*Id.*, 65). After the operator asserted that he could not send a lieutenant, Bacquie asked if he could send another sergeant (T. 37). As Bacquie was on the phone, Sergeant Tergesen asked him for his identification again; Bacquie told Sergeant Tergesen to wait and that he would deal with him when he concluded the call (*Id.*). Bacquie noticed the police officers moving closer to him, with Sergeant Tergesen moving very close to his right side (*Id.*). According to Bacquie, while he continued the call to 911, Sergeant Tergesen said, "Get him" (*Id.*, 39, 78).

According to Bacquie, several police officers approached him and Respondent punched him in his face (T. 39, 78). Bacquie claimed that the officers then slammed him up against a fence (T. 77). The police officers grabbed Bacquie's arms and pulled him forward, eventually pushing him to the ground face-first (T. 39, 45). Bacquie claimed that he was punched and kicked about his body and face while he was on the ground (*Id.*, 45, 66). Bacquie also claimed that he could not have fought back because there were five police officers on top of him (T. 41). Bacquie specifically denied head-butting or striking any police officer (T. 41).

Bacquie admitted that as he lay on his stomach, he pulled his hands away and held them under his body as officers attempted to handcuff him (T. 45). He was eventually handcuffed and lifted to his feet by police officers, including Respondent (T. 42). Bacquie testified that Respondent and another officer led him to the police van (T. 82). Because the van was facing westbound on [REDACTED], Bacquie had to walk in front of the van and turn to his right in order to approach the passenger doors from the street side. Bacquie claimed that as he waited for the police officers to open the van doors, Respondent placed his hand on Bacquie's face and slammed it into the window in the door (T. 43, 44, 67, 71, 81, 84). Bacquie claimed that he had no recollection of being inside the van but surmised that he had entered it when he found himself at the 113th Precinct (T. 86). At the precinct, Bacquie was confronted by a police officer he believed was named McCaffrey, who asserted that Bacquie had caused an injury above his eye, saying, "You did this to me" (T. 87). Bacquie also claimed that the officers directed a racial epithet toward him (T. 98).

Bacquie admitted that as a general proposition, he did not hold police officers in high regard based upon his belief that police target communities of color unfairly (T. 21-23, 53). He

also admitted that he had been convicted of three felonies in the past and had served time in both state and federal prisons (T. 19-21, 54-57).

Bacque admitted on cross-examination that he made factual assertions to his civil attorney which were included in his federal complaint, which he signed but claimed not to have read (T. 93-94). In his federal complaint, Bacque specifically alleged that the police officers directed racial epithets toward him as he was being wrestled to the ground and in the police van once he was in custody (Respondent's Ex. A); Bacque conceded that he did not make those factual assertions during his direct testimony (T. 67). Finally, Bacque conceded to this tribunal that when he was interviewed by CCRB on September 10, 2014, he stated that he did not know which officer had allegedly slammed his face into the van door (T. 71, 72).

Person A provided two statements to CCRB, one on October 15, 2014, and the other on October 20, 2014, both of which were admitted into evidence (Department Ex. 1, 1-A, 2). In his October 15, 2014 statement, Person A claimed to have witnessed police officers grabbing Bacque by the neck from the rear to bring him down to the ground, as well as punching him repeatedly (Department's Ex. 2 at 5-6, 8, 9-10). Person A also claimed to have heard Bacque say, "He's ramming my head into the van door," but denied witnessing Bacque being pushed into the door (*Id.* at 11). In Person A's October 20, 2014 statement, he essentially repeated the factual assertions he made in his October 15th statement but, for the first time, claimed to have witnessed a police officer "ramming" Bacque into the passenger door of the van, which was open (Dept. Ex. 1-A at 17).

Person B provided a statement to CCRB on October 23, 2014, which was admitted into evidence (Department Ex. 1, 1-B). In his statement, Person B claimed the police officers were generally disrespectful, including stating that they were not "[t]here to...hear anyone's

mouth,” and threatening one of the guests by saying, “If you don’t...shut up now we[re] gonna [sic] take you in” (Dept. Ex. 1-B at 4, 10-11, 17). Person B claimed to have witnessed one of the police officers grab Bacquie by his arm, after which he pulled away, then the other police officers grabbing Bacquie by the arms and around his neck to bring him to the ground (*Id.* at 13-16). Finally, Person B claimed to have seen police officers throw Bacquie into the police van with such force that the van shook, causing him to hit his head on the roof of the van (*Id.* at 22-23).

Respondent testified that he heard music coming from the location as far as one block away (*Id.*). When the police van arrived at the location, Respondent accompanied Sergeant Tergesen at his request (T. 272). Respondent and Sergeant Tergesen walked up the driveway of the property until they reached an open gate, which led to the back yard (*Id.*). As they approached the gate, Bacquie approached them in a manner Respondent described as aggressive (*Id.*).

According to Respondent, Bacquie said, “Get the fuck off my property. You don’t have a fucking search warrant. Why the fuck am I always getting harassed?” (T. 273). When Sergeant Tergesen asked Bacquie for his identification, Bacquie replied, “I’m not giving you anything. You don’t have a warrant to be on my property. You’re trespassing on my property” (T. 274). Respondent claimed he told Bacquie, “Listen, sir. All we want to do, we’re just asking you for ID. There’s no reason to get excited. We’re getting calls from your neighbors” (*Id.*). Respondent testified that his intention was to calm Bacquie down (*Id.*). After Sergeant Tergesen requested Bacquie’s identification several more times without success, he signaled to the officers who had remained behind in the police van and they joined Respondent in the driveway (T. 277).

Bacquie then placed a call to the 911 operator and demanded that a lieutenant or a supervisor respond to his address (T. 278-279). According to Respondent, Sergeant Tergesen replied that Bacquie was not getting another supervisor and that he should provide his identification (*Id.*). Bacquie then told the 911 operator that he was being harassed and that he had not been told why the police were at his home (*Id.*). After Sergeant Tergesen asked Bacquie for his identification several more times without success, he turned to the police officers and said, "92," which Respondent understood to mean that Bacquie was to be arrested (T. 279-280).

Respondent reached for Bacquie's right hand but he pulled it away (T. 280). Respondent grabbed Bacquie's hand again but was pulled into the yard, until he pulled Bacquie forward (*Id.*). The other police officers came toward Bacquie and together brought Bacquie down to a prone position on the pavement (*Id.*). Respondent estimated Bacquie's height and weight as approximately 6'3" and 230 pounds (*Id.*). Bacquie's hands were clenched beneath his chest and it took approximately 30 seconds before Officer McCaffrey was able to place handcuffs on him (T. 281-282). Once Bacquie was handcuffed, Respondent and Officer McCaffrey lifted him to his feet and began walking him toward the police van (T. 282). Respondent was walking on Bacquie's left side and Officer McCaffrey was on his right (T. 283). As they walked toward the van, Bacquie attempted to pull away from Respondent, dropped toward the sidewalk and swung his head around, striking Officer McCaffrey under his eye (*Id.*). According to Respondent, Bacquie attempted to fall to the sidewalk and swing his head around again in an attempt to strike him but Respondent moved out of the range of Bacquie's head (*Id.*).

Respondent and Officer McCaffrey walked around the police van where they brought Bacquie to the open doors to the passenger compartment (T. 284). Bacquie initially hesitated before the van doors and refused to enter (T. 285). Respondent told Bacquie, "Listen, it's over,

okay? You're in cuffs. It's over. Calm yourself" (*Id.*). Sergeant Tergesen then walked over to Bacquie and said to him, "Listen, it's over. There's no point in fighting here, okay? Let's just get in the van and calm down" (*Id.*). At that point, Bacquie stepped into the van and took a seat (*Id.*).

According to Respondent, once Bacquie sat down he said, "I'm going to take your fucking jobs. I'm going to make a million dollars off this" (T. 287). When Bacquie arrived at the 113th Precinct, he asked to go to the hospital (*Id.*). While Respondent asserted that he saw no indicia of an injury to Bacquie, he took him to the hospital at approximately 2300 hours (T. 288). Respondent asserted that Bacquie's body never came in contact with the police van at any point while he was being placed inside it (T. 290). Respondent denied forcing Bacquie into the van, as well as forcing Bacquie's face or head into contact with the door of the van (T. 291-292).

Sergeant William Tergesen testified that as the police van proceeded to the subject location, he heard music coming from that direction from several blocks away (T. 160). According to Sergeant Tergesen, Officer Lovelock told him, "I think this is Richard Bacquie's house" (T. 182). Officer Lovelock also stated that Bacquie had previously made a complaint against him (T. 183). The police van parked approximately 40 feet away from the location; Sergeant Tergesen and Respondent stepped out of the van and walked up Bacquie's driveway until they reached a gate leading from the driveway into Bacquie's back yard (*Id.*, 161-162). The gate was open, permitting him to observe Bacquie and several of Bacquie's guests (T. 162). Sergeant Tergesen shone his flashlight into the backyard in an effort to draw the attention of the homeowner (T. 180).

According to Sergeant Tergesen, he walked toward the open gate and was met by Bacquie, who ran up to the gate and shouted, "Get off my fucking property" (*Id.*, 162, 184, 196-

197, 213). Sergeant Tergesen told Bacquie that he was there to investigate a noise complaint and asked if Bacquie was the homeowner (T. 162-163). Sergeant Tergesen asked Bacquie to produce identification, which he refused to do. Bacquie stated, "I'm calling 911, you guys are on my property. You're not supposed to be here" (T. 163). Sergeant Tergesen testified that he asked Bacquie for identification four to five more times without any success (*Id.*). Bacquie called the 911 operator and complained that Sergeant Tergesen was trespassing and requested that another supervisor respond to the scene (T. 188).

Sergeant Tergesen waved his flashlight in the direction of the police van and the rest of his team left it, moving toward the driveway (*Id.*). Sergeant Tergesen continued to ask Bacquie for identification while Bacquie was on the call to 911 (*Id.*). After several attempts to obtain identification from Bacquie, Sergeant Tergesen decided to effect Bacquie's arrest, calling out "92 CHARLIE," which he testified was a code signaling the other police officers that Bacquie was to be placed under arrest (T. 163-164, 195, 196, 215). Sergeant Tergesen grabbed Bacquie's arm, then observed the police officers approach Bacquie and forcibly bring him to the pavement face-first (T. 164-165, 198-199, 201, 202). Bacquie, though initially resistant, was eventually handcuffed behind his back (T. 165). Sergeant Tergesen observed police officers lift Bacquie to his feet and begin escorting him to the police van (*Id.*). Sergeant Tergesen walked into the back yard and began looking for the device which produced the allegedly excessive noise (T. 165-166). Sergeant Tergesen eventually identified a laptop computer as the source of the music and seized it (T. 166). When he returned to the police van, he observed Bacquie facing the open doors of the van, with Respondent and Officer McCaffrey on either side of him, refusing to step inside (T. 167, 209). Sergeant Tergesen told Bacquie, "Listen, you need to get into the van..." after which Bacquie did so (T. 167-168, 207-208).

Sergeant Tergesen testified that: (1) at no point did he witness police officers push Bacquie into the police van; (2) he did not observe Bacquie hit his head against the police van; and (3) that no officer slammed Bacquie into a door to the police van (T. 168). Sergeant Tergesen testified that the police van was parked facing west, which put the driver's door facing the arrest location and the doors to the passenger area of the van facing the opposite side of 137th Avenue (T. 168-169).

While Sergeant Tergesen denied seeing any evidence of injury to Bacquie, either at the scene of his arrest or at the precinct, he acknowledged signing a Medical Treatment of Prisoner form, which stated that Bacquie had sustained a contusion to his forehead when he fell to the ground while resisting arrest (T. 169-170, 171-172, 202-203, 204). Sergeant Tergesen admitted that he had a lit cigar in his hand as he approached Bacquie's gate (T. 179).

Sergeant Tergesen conceded that he did not witness Bacquie head-butting Officer McCaffrey but learned later that evening that Bacquie had done so (T. 204-207). Finally, Sergeant Tergesen acknowledged accepting a disposition to Departmental charges arising from the performance of his duty on August 30, 2014, with respect to Bacquie's arrest (T. 176).

Police Officer Michael McCaffrey testified that upon the team's arrival at the location, he observed Sergeant Tergesen and Respondent exit their police van and approach the driveway of the subject location (*Id.*, 240). Officer McCaffrey testified that he could hear music coming from the location from approximately one block away (*Id.*, 241). After a short time, he observed Sergeant Tergesen waving his illuminated flashlight in the direction of the van, which he interpreted as a signal for assistance from the police officers who had remained in the van (T. 224, 242).

Officer McCaffrey and the other members of his team left the van and walked to the driveway of the location, where he observed Sergeant Tergesen speaking with Bacquie (T. 225, 243). He overheard a conversation Bacquie was having with a 911 operator, in which Bacquie repeatedly asked for a supervisor to respond to the location because he was being harassed (*Id.*, 244-245). Sergeant Tergesen unsuccessfully requested Bacquie's identification several times (T. 225-226, 245). According to Officer McCaffrey, Bacquie repeatedly used profanity during the encounter (T. 247). He heard Sergeant Tergesen say, "92," which he understood to be a code to signal his intention to effect an arrest (T. 226, 246). Officer McCaffrey observed Respondent grasp one of Bacquie's arms, but then also observed Bacquie pull his arm from Respondent's grip (T. 226-227, 246). Officer McCaffrey and the other police officers converged on Bacquie and used force to bring him to the ground face-first (T. 227, 248). Bacquie held his hands underneath his torso, requiring the officers to use force to pull his hands free in order for him to be handcuffed (*Id.*, 249). Officer McCaffrey used his handcuffs to restrain Bacquie once his hands were pulled from beneath his body (*Id.*, 249). Once Officer McCaffrey had handcuffed him, Bacquie was lifted to his feet by he and Respondent (T. 228, 250-251). Officer McCaffrey and Respondent walked Bacquie toward the police van, with Respondent walking on Bacquie's left and Officer McCaffrey walking on Bacquie's right (T. 228, 230, 253). As they walked toward the police van, Bacquie swung his head around and hit Officer McCaffrey on the left side of his face with the right side of his head¹ (T. 228-229, 251). Officer McCaffrey continued holding Bacquie's arm and eventually brought him to the passenger doors of the police van (T. 230). Bacquie hesitated at the doors and initially refused to enter the passenger compartment of the van (T. 231). After Sergeant Tergesen and Respondent urged Bacquie to enter the van, he

¹ Officer McCaffrey testified that after he returned to the 113th Precinct, he began to feel dizzy and sought medical attention at a hospital.

eventually relented and stepped into the van, assisted by Officer McCaffrey and Respondent (T. 231-232). Officer McCaffrey denied witnessing Bacquie hit his face on any part of the van, whether deliberately or accidentally. He testified that he was standing next to Bacquie and would have been able to see such contact, had it actually occurred (T. 232, 253, 260).

Officer McCaffrey conceded that he accepted a command discipline based upon his actions that evening (T. 235, 253-254). He conceded further that he was one of the defendants in Bacquie's civil action and agreed to contribute \$500 to the \$100,000 settlement (T. 237).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than attempting to reconstruct past events on the basis of opposing accounts. In this case, the sole issue is whether Respondent failed to exercise due regard for the safety of a person in his custody by not ensuring that he was placed inside a police vehicle without being injured. The evidence offered by the Department in support of the charge against Respondent, as well as the evidence offered by Respondent in defense of the charge against him, is comprised almost exclusively of eyewitness testimony. While neither the basis for Bacquie's arrest nor the manner in which the arrest was effected are issues before the tribunal, the various witness narratives regarding the police interaction with Bacquie are relevant for purposes of assessing witness credibility.

I credit Respondent's testimony as forthcoming and truthful, primarily because it was plausible under all of the attendant circumstances, but also because his material factual assertions were credibly corroborated by Sergeant Tergesen and Officer McCaffrey. I similarly credit the testimonies of Sergeant Tergesen and Officer McCaffrey as forthcoming, logical and generally consistent with the other credible evidence in the case. While there were distinctions between their respective testimonies regarding the events leading up to Bacquie being placed under arrest, the discrepancies were unremarkable. I make these credibility findings mindful that Sergeant

Tergesen and Officer McCaffrey each accepted disciplinary sanctions for their role in Bacquie's arrest.

Respondent's assertions that: (1) Bacquie hesitated before entering the van; (2) Respondent and Sergeant Tergesen used verbal persuasion to convince Bacquie to enter the van; and (3) Bacquie entered the van and sat down without making any contact with the van were corroborated by Sergeant Tergesen and Officer McCaffrey. The most persuasive corroborative evidence came from Officer McCaffrey's testimony, under questioning by the tribunal, that he was in a position to have seen Bacquie struck, if it had occurred as he claimed, and that no such contact took place. There was no other credible evidence in the record which caused me to question the veracity of Respondent and his witnesses on this central point.

In contrast, Bacquie asserted during his in-court testimony that Respondent deliberately slammed his head into a closed van door while he was handcuffed. Based upon Bacquie's: (1) in-court admission to some degree of anti-police bias; (2) record of previous felony convictions; (3) financial interest in civil litigation which was settled days before his testimony; and (4) prior inconsistent statements contained in the complaint filed in connection with his federal civil action, I find that his testimony suffers from several infirmities which would cause a reasonable fact-finder to pause before accepting it at face value.

For example, Bacquie testified at trial that he had no recollection of being inside the police van. This testimony is irreconcilable with the assertion he made in his federal complaint that racial epithets were directed toward him during his ride to the precinct (Respondent's Ex. A, p. 3-4, ¶¶19, 20). Bacquie's testimony on this point is further contradicted by Officer McCaffrey's credible testimony that Bacquie was verbally belligerent once he sat down in the

van (T. 233, 259). A further review of the federal complaint also reveals that Bacquie made no allegation in it that his face was pushed into a van door (Respondent's Ex. A).

Person A made two hearsay statements which are part of the record. In both statements, Person A corroborates Bacquie's factual assertions regarding being punched repeatedly after being brought to the ground forcibly. This use of force, however, is not before this tribunal. In Person A's October 15, 2014, telephone interview, he asserted that he heard Bacquie say, "He's ramming my head into the van door," but denied that he had witnessed the aforementioned act. Two things are noteworthy about this out-of-court statement: (1) Bacquie never asserted in his testimony that he called out that he was being slammed into a door; and (2) Person A asserted in his October 20, 2014, statement that he saw a police officer ramming Bacquie's head into the open door of the police van. Person A's two statements, considered together, are problematic due to his initial denial that he witnessed the conduct at issue in this case, followed by an assertion five days later that he did witness the alleged misconduct. It is possible that this discrepancy may have been resolved in the crucible of cross-examination but because Person A did not present himself for live testimony, the discrepancy is fatal to his credibility. As such, his October 20th statement is unreliable, and therefore non-corroborative of Bacquie's assertion that his head was slammed into a van door.

Person A asserted in his October 23, 2014, hearsay statement that Bacquie was thrown into the van and that he saw Bacquie's head hit the top of the van. This factual assertion is at odds with those of Bacquie and Person A, who allege, respectively, that Bacquie was slammed into a closed van door as well as claiming that Bacquie was slammed into an open van door. When considered against the entirety of the record, Person B's assertion is dubious. Accordingly, I find that Person B's statement has no probative value based upon the

irreconcilable conflict between it and the allegations made by the other Department witnesses on the alleged misconduct at issue.

Based upon the credible, relevant evidence in the record, I find that the Department has failed to meet its burden of proof by a preponderance of the evidence; accordingly, I find Respondent NOT GUILTY.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Paul M. Gamble", written over the text "Respectfully submitted,".

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

SEP 25 2010

A handwritten signature in blue ink, appearing to be "James P. O'Neill", written over the date and name.
JAMES P. O'NEILL
POLICE COMMISSIONER